

REMARKS

Applicant thanks the Examiner for the courtesy extended during the telephone interview of July 6, 2004, wherein the present claim amendments were discussed.

Applicant respectfully traverses the § 102(b) rejection of claims 1, 3, 6, and 11 over Tseung. In the present invention, when recording of a first broadcast program ends in failure, a second broadcast program, which is different, or "other than" the first broadcast program, but nevertheless has the same program content, is located and recorded. In contrast, Tseung requests and receives retransmission of the same program, and at least for this reason cannot anticipate the claims under § 102(b).

In the Final Office Action the Examiner expressed concern with the term "alternative" to define the second broadcast program since he felt that this term did not necessarily exclude transmission of the same program, and did not necessarily imply another program other than the original (failed) program. Applicant, therefore, to alleviate the Examiner's concern, has amended the claims to recite that the original (failed) broadcast is a "first" broadcast, and the alternative broadcast is a "second broadcast other than the first broadcast."

The amendment restates substantially the same invention in different terms, amended to alleviate the Examiner's concern with the breadth of one term. Accordingly, no further search should be required, and the Examiner should be able to enter the Amendment under Rule 116 and allow the claims.

Entry of this amendment is proper after final action in order to place the claims in condition for allowance or in better form for appeal. This amendment was not presented earlier because definition of the sole issue to patentability being use of the term "alternative" did not develop until the Final Office Action.


Applicant respectfully requests entry of this Amendment, reconsideration, and allowance of all of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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